

JAN 26 1979 -2 55 PM

INTERSTATE COMMERCE COMMISSION

0-C33A200

Interstate Commerce Commission  
Washington, D.C.

No.   
Date JAN 26 1979  
Fee \$ 50.  
ICC Washington, D. C.

Gentlemen:

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and eight counterparts of an Equipment Lease dated as of January 1, 1979.

The general description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Lessor: Gould Leasing Services, Inc.  
10 Gould Center  
Rolling Meadows, Illinois 60008

Lessee: Brae Corporation  
Three Embarcadero Center  
San Francisco, California 94111

The undersigned is the Lessor mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original and six counterparts of the Equipment Lease to Gary Green, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

GOULD LEASING SERVICES, INC.

By

*[Signature]*

LESSOR AS AFORESAID

Enclosures

RECEIVED  
JAN 26 2 52 PM '79  
FEE OPERATION BR.  
I.C.C.

JAN 26 2 52 PM '79

RECEIVED

*Counterpart - C.T. Kennedy*

DESCRIPTION OF ITEMS OF EQUIPMENT

Manufacturer of Equipment: Fruit Growers Express Company

Description and Mark and  
Number of Items of  
Equipment:

200 50' XM Boxcars  
Marked and Numbered ONW 5051  
to ONW 5250, both inclusive

Maximum Purchase Price  
of Equipment:

\$41,500 per Item

Maximum Aggregate Purchase  
Price of Equipment:

\$8,300,000

Place of Delivery:

Eden, North Carolina

Outside Delivery Date:

June 30, 1979

(Brae No. 79-1)

SCHEDULE A

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

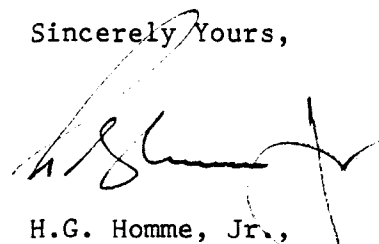
OFFICE OF THE SECRETARY

Gary Green, Esq.  
Chapman And Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

Dear Mr. Green:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on January 26, 1979 at 2:55 PM , and assigned recordation number(s) 10057

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

RECORDATION NO. 10053 Filed 1425

JAN 26 1979 -2 55 PM

INTERSTATE COMMERCE COMMISSION

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EQUIPMENT LEASE

Dated as of January 1, 1979

BETWEEN

GOULD LEASING SERVICES, INC.

LESSOR

AND

BRAE CORPORATION

LESSEE

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(Brae No. 79-1)  
(200 50' XM Boxcars)

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Attachments to Equipment Lease:

Schedule A - Description of Items of Equipment  
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## EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of January 1, 1979 between GOULD LEASING SERVICES, INC., a Delaware corporation (the "Lessor"), and BRAE CORPORATION, a Delaware corporation (the "Lessee");

### R E C I T A L S:

A. Pursuant to a Purchase Order Assignment dated as of January 1, 1979, the Lessee has assigned to the Lessor its right to purchase the Equipment referred to below. Any capitalized terms not defined herein shall have the meaning specified in the Participation Agreement.

B. The Lessee and the Lessor intend to enter into a Participation Agreement dated as of January 1, 1979 (the "Participation Agreement") with THE FIRST NATIONAL BANK OF BOSTON, (the "Note Purchaser") providing for commitments of the Note Purchaser which, together with funds provided by the Lessor will permit the Lessor to obtain the funds necessary to purchase the equipment (collectively the "Equipment" and individually an "Item of Equipment") described in Schedule A hereto and made a part hereof. The Lessor will commit to advance an amount equal to 41.10% of the Purchase Price of each Item of Equipment and the Note Purchaser will commit to purchase the Secured Notes (the "Notes") of the Lessor in an amount equal to 58.90% of the Purchase Price of each Item of Equipment. It is contemplated that the Participation Agreement will provide that the Notes will be secured by an assignment of the Lessor's right, title and interest in and to this Lease and in and to the Equipment pursuant to a Security Agreement dated as of January 1, 1979 (the "Security Agreement") from the Lessor to the Note Purchaser.

### SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease and Hire. Upon delivery of each Item of Equipment by the manufacturer thereof identified in Schedule A hereto (hereinafter referred to as the "Manufacturer"), the Lessee shall lease and let and the Lessor shall hire to the Lessee such Item of Equipment for the rental and on and subject to the terms and conditions herein set forth.

1.2. Inspection and Acceptance. The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in



good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and the Manufacturer thereof a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule B with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date set forth in Schedule A.

1.3. Certificate of Acceptance. The Lessee's execution and delivery of a Certificate of Acceptance with respect to each Item of Equipment pursuant to Section 1.2 hereof shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer thereof, such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the date of this Lease. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

## SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rent for Equipment. The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

(a) Interim Rental. For each Item of Equipment, an amount per day (the "Interim Rental") equal to 0.03294% of the Purchase Price thereof for the period, if any, from the Closing Date for such Item of Equipment to, but not including, the earlier of (i) the final Closing Date under the Participation Agreement, or (ii) June 30, 1979 (the "Term Lease Commencement Date"); and

(b) Fixed Rental. For each Item of Equipment, 60 quarterly installments of fixed rental (the "Fixed Rental"), payable in arrears, each in an amount equal to 2.96450% of the Purchase Price thereof.

2.2. Rent Payment Dates. The installment of Interim Rental for each Item of Equipment shall be due and payable on the Term Lease Commencement Date. The first installment of Fixed Rental for each Item of Equipment shall be due and payable three months following the Term Lease Commencement Date and the balance of said installments shall be payable at three-month intervals thereafter with the final such installment payable 15 years following the Term Lease Commencement Date. If any of the rent payment dates is not a business day,

the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Illinois or New York are authorized or required to close.

2.3. Place and Manner of Rent Payment. The payments to be made by the Lessee under this Lease shall be made as follows:

(a) The installment of Interim Rental shall be paid to the Lessor by wire transfer to the account of the Lessor at the address thereof provided for payments in Section 20.1 hereof; provided that in the event either the Lessor or the Note Purchaser shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(b) The portion of any installment of Fixed Rental resulting from an increase in the amount thereof, if any, which the Lessee shall agree to pay to the Lessor pursuant to any rental adjustment arrangements shall be paid in full to the Lessor by wire transfer to the account of the Lessor at the address provided for payments in Section 20.1 hereof;

(c) Each installment of Fixed Rental shall be paid to the Lessor by wire transfer to the account of the Lessor at the address thereof provided for payments in Section 20.1 hereof; provided that in the event either the Lessor or the Note Purchaser shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee; and provided further that in the event such notice shall direct the Lessee to divide such installment into not more than two portions, in addition to the portion referred to in Section 2.3(b) hereof, and to pay each portion by wire transfer separately to not more than two parties, the Lessee agrees to do so;

(d) The entire amount of any payment of Casualty Value pursuant to Section 11 hereof shall be paid to the Lessor by a check drawn on a bank located in the continental United States (identifying the same as a payment of Casualty Value relating to Brae No. 79-1),

and forwarded to the Lessor in the manner provided for notice in Section 20.1 hereof; provided that in the event either the Lessor or the Note Purchaser shall notify the Lessee in writing that the right to receive payment of such Casualty Value shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by such check in the manner designated in such notice or as otherwise designated from time to time in writing by such assignee;

(e) The amount of any payment owing to the Lessor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 20.2 hereof shall be made directly to the party to receive the same without regard to the assignment of this Lease pursuant to Section 16 hereof;

(f) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(g) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Lessor or its assignee, in which case the Lessee shall reimburse the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by wire transfer where specified above at the opening of business of the office of the transferring bank on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made, and where not so specified, such payment shall be made by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised in writing.

2.4. Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Interim Rental and Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation

or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever.

### SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate 15 years following the Term Lease Commencement Date provided for in Section 2.1(a) hereof.

### SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

4.2. Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with the road mark and number of the Permitted Sublessee (as defined in Section 17.2 hereof as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased from GOULD LEASING SERVICES, INC.,  
as Owner, and Subject to a Security Interest  
recorded with the I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road mark and number of any Item of Equipment except in accordance with a statement of new road numbers to be substituted therefor, which statement previously shall have been delivered to the Lessor and the Note Purchaser by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee or the Permitted Sublessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates or the Permitted Sublessee on railroad equipment used by such party of the same or a similar type for convenience of identification.

## SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR, EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii)

the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Items of Equipment described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters. The Lessor covenants and agrees to keep the Equipment free of liens arising through acts of the Lessor which are not related to this transaction.

## SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser) and their respective successors and assigns from and against:

(a) any and all loss or damage to the Equipment, usual wear and tear excepted; and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to any Item of Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Item of Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent, trademark or copyright infringements, or (iv) as a result of claims for negligence or strict liability in tort.

The indemnities and assumptions of liabilities set forth in this Section 6.1 do not guarantee to any party at any time a residual value in the Equipment nor do they guarantee the payment of the Notes or any interest accrued thereon.

6.2. Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time,

by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

#### SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) (the "Interchange Rules") with respect to the use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor.

#### SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange in accordance with the Interchange Rules. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment without the prior written authority and approval of the Lessor and any assignee pursuant to Section 16 hereof which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

## SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease and any other liens or charges which arise by virtue of claims against, through or under any other party other than the Lessor, but the Lessee shall not be required to pay or discharge (a) any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest or other rights of any assignee under Section 16 hereof in and to the Equipment, or (b) liens of mechanics, material, men and laborers for work or service performed or materials furnished with respect to the Equipment which are not yet due and payable, or (c) the lien of current taxes and assessments not in default (but only if such taxes are entitled to priority as a matter of law). The Lessee's obligations under this Section 9 arising during the term of this Lease or any storage period hereunder shall survive the termination of this Lease.

## SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.

10.1. Filing. Prior to the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will cause this Lease and the Security Agreement to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and in such other places within the United States as the Lessor or the Note Purchaser may reasonably request and will furnish the Lessor and the Note Purchaser proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Note Purchaser, for the purpose of protecting within the United States, the Lessor's title to, or the Note Purchaser's security interest in, any Item of Equipment to the satisfaction of the Lessor's or the Note Purchaser's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor and the Note Purchaser proof of such United States filings and an opinion of the Lessee's counsel reasonably satisfactory to the Lessor and the Note Purchaser that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refile, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action.



10.2. Payment of State and Local Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser) and their respective successors and assigns (the "Indemnitees") for collection or other charges and will be free of expense to the Indemnitees with respect to any Impositions as hereinafter defined. As used in this Section 10.2 "Impositions" shall mean the amount of any local, state, Federal or foreign taxes, assessments or license fees and any charges, fines or penalties in connection therewith which are imposed on or measured by this Lease or the receipt of sums pursuant hereto or any sale, rental, use, payment, shipment, delivery or transfer of title in respect of the Equipment under the terms hereof or the Security Agreement, including Impositions in respect of the receipt of indemnification payments pursuant to this Lease or payments pursuant to this Section 10.2, but excluding all such amounts related solely to a sale of Equipment by the Lessor following return of Equipment by the Lessor pursuant to Section 13 hereof; provided that except with respect to indemnification payments hereunder or payments pursuant to this Section 10.2. Impositions shall not include as to each respective Indemnitee: (i) United States Federal income tax liability and, to the extent that any respective Indemnitee receives credit therefor against its United States Federal income tax liability, any foreign income tax of such Indemnitee, payable by any respective Indemnitee in consequence of the receipt of payments provided herein; and (ii) the aggregate of all franchise and gross receipts taxes measured by net income based on such receipts, up to the amount in the aggregate of any such income and franchise taxes which would be payable to the state and city in which such Indemnitee has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided. The Lessee agrees to pay, on demand, any and all Impositions. The Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon any Indemnitee solely by reason of its interest with respect thereto and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the interest of any Indemnitee therein or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the reasonable opinion of the Indemnitee, adversely affect the interest of any Indemnitee hereunder or under the Security Agreement. If any Impositions shall have been charged or levied against any Indemnitee directly and paid by such Indemnitee after such Indemnitee shall have given written notice thereof to the Lessee and the

same shall have remained unpaid for a period of ten business days thereafter, the Lessee shall reimburse such Indemnatee on presentation of invoice therefor. Prior to making such payment, such Indemnatee shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either prepare and file such reports in such manner as to show as required the interests of each Indemnatee in such Items of Equipment or, if it shall not be permitted to file the same, it will notify each Indemnatee of such reporting requirements, prepare such reports in such manner as shall be satisfactory to each Indemnatee and deliver the same to each Indemnatee within a reasonable period prior to the date the same is to be filed.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

#### SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE; EARLY TERMINATION.

11.1. Insurance. The Lessee agrees that it will at all times during the term of this Lease and at its own cost and expense keep each Item of Equipment insured against loss by fire, windstorm and explosion and with extended coverage and against such other risks as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee at not less than the Casualty Value of such Item and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$10,000,000 per occurrence, or in the event that such amount of insurance is not available on commercially reasonable terms, such lesser amount as is so available, but in no event less than \$5,000,000 per occurrence. Any such casualty insurance may have applicable thereto deductible provisions to the extent of \$50,000 per occurrence and any such public liability insurance may have applicable thereto deductible provisions to the extent of \$100,000 per occurrence. Such casualty insurance requirement shall be deemed to be met if carried under blanket policies maintained by the Lessee providing coverage of all rolling stock owned or leased by the Lessee in the amount of \$5,000,000 per occurrence so long as such blanket

policies otherwise comply with the provisions of this Section 11.1. All such insurance shall cover both the interest of the Lessor and the Lessee in the Equipment or, as the case may be, shall protect the Lessor and the Lessee in respect of risks arising out of the condition, the maintenance, use or ownership of the Equipment and shall provide that losses, if any, in respect of the Equipment shall be payable to the Lessee and the Lessor as their respective interests may appear; provided, however, that upon receipt by the Lessee of notice of the assignment of this Lease and the rents and other sums payable hereunder, as provided in Section 16 hereof, the Lessee shall cause the insurance on the Equipment to provide that the losses, if any, shall be payable (except as provided below) to the assignee specified in such notice (referred to in this Section 11.1 as the "Secured Assignee") under a standard mortgage loss payable clause satisfactory to the Lessor and the Secured Assignee. No such policy shall contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Equipment against the peril involved, whether collectible or not; provided, however, that such policy may relieve the insurer thereunder of such liability to the extent that payment is made by a railroad company as compensation for the destruction beyond repair of an Item of Equipment pursuant to applicable rules of the Interstate Commerce Commission, the United States Department of Transportation and the American Association of Railroads. No such policy shall, in respect of the interests of the Lessor and the Secured Assignee in such policy, invalidate the coverage thereof due to any action or inaction of the Lessee or any other person (other than the Lessor or the Secured Assignee, but only in respect of their respective coverages) and shall insure the Lessor and the Secured Assignee regardless of any breach or violation of any warranty, declaration, or condition contained in such policy by the Lessee or any other person (other than the Lessor or the Secured Assignee, but only in respect of their respective coverages). The Lessee shall furnish the Lessor with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies. All such policies shall provide that the same shall not be cancelled or materially changed without at least 30 days' prior written notice to each assured named therein.

The proceeds of any insurance received by the Lessor or the Secured Assignee on account of or for any loss or casualty in respect of any Item of Equipment shall be released to the Lessee either (1) upon a written application signed by the President, any Vice President or the Treasurer of the Lessee for the payment of, or to reimburse the Lessee for the payment of, the cost of repairing, restoring or replacing the Item of Equipment which has been lost, damaged or destroyed so long as such application is provided within 180 days following receipt of such insurance proceeds by such party and the restoration, replacement and

repair parts become immediately subject to all of the terms and conditions of this Lease and all public filings, recordings and registrations necessary or expedient to vest title thereto in the Lessor are accomplished by the Lessee at its expense (which application shall be accompanied by satisfactory evidence of such cost and of the completion of such repair, restoration or replacement), or (ii) if this Lease is terminated with respect to such Item of Equipment pursuant to Section 11.4 promptly upon payment by the Lessee of the Casualty Value to the Secured Assignee; provided that, if an Event of Default under this Lease shall have occurred and then be continuing, such proceeds shall be applied against such liability.

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease for a stated period which exceeds the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser) in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

11.3. Sum Payable for Casualty Loss. The Lessee, on the next succeeding rent payment date following its notice of a Casualty Occurrence with respect to any Item or Items of Equipment, shall pay to the Lessor the Interim or Fixed Rental installment due on such payment date for such Item of Equipment plus any rentals or other sums due on or prior to such date then remaining unpaid plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

11.4. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, so long as no Event of Default, or any event which with the lapse of time or the giving of

notice, or both, would constitute such an Event of Default shall have occurred and be continuing, the Lessee may, after payment of such Casualty Value by the Lessee, retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and any such amount in excess of the Casualty Value shall be divided equally between the Lessor and the Lessee. In disposing of such Item of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item of Equipment.

11.6. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is required to be paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such required date of payment.

11.7. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. So long as no Event of Default, or event which with the lapse of time or giving of notice, or both, shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

11.9. Early Termination. Subject to the terms and conditions herein expressed, the Lessee shall have the following right to terminate this Lease prior to end of the term hereof:

- (a) If no Event of Default (or an event which would constitute an Event of Default but for the

lapse of time or the giving of notice or both) shall have occurred and be continuing and the Equipment in Lessee's reasonable judgment as expressed in a duly adopted resolution of its Board of Directors or the executive committee thereof become surplus or economically obsolete to Lessee's requirements, then Lessee may at its option, upon not less than 180 days prior written notice to Lessor, terminate this Agreement with respect to all of the Equipment, or a portion of the Equipment which consists of not less than 100 Units, provided that (i) the effective date (hereinafter called the Termination Date) of such termination is a Fixed Rental payment date as set forth in Section 2.2 hereof, (ii) such Termination Date occurs on or after the seventh anniversary after the Term Lease Commencement Date, and (iii) no such termination shall be effective until the Equipment shall have been sold and all sums payable by the Lessee pursuant to Section 11.9(b) hereof have been paid in full.

(b) During the period from the giving of such notice until the Termination Date Lessor, and Lessee on behalf of Lessor, shall use reasonable efforts to obtain bids for the cash sale of the Equipment. Lessor and Lessee shall certify to each other in writing the amount and the terms of each bid received by them the names and addresses of the parties submitting such bids. Subject to Lessor's right to reject bids as set forth in Section 11.9(c) hereof, on the Termination Date Lessor shall without recourse, representation or warranty, sell the Equipment to the highest bidder who shall have submitted such bid prior to such date on terms and conditions acceptable to Lessor in its sole and absolute discretion; provided that neither the Lessee or any person, firm or corporation affiliated with the Lessee may bid on or purchase the Equipment. An "affiliate" of the Lessee shall mean any person who possesses, directly or indirectly, the right to vote at least 10% of the voting securities of the Lessee and any person who, directly or indirectly, controls or is controlled by or is under common control with the Lessee, and "control" (including "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or control the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise. Upon such sale the Lessee shall pay to the Lessor an amount equal to (i) (A) the Termination Value of the Equipment plus (B) the actual expenses

incurred by Lessor in making the sale, including without limitation storage, insurance, advertising, brokerage and attorney's fees and expenses incurred in connection with such sale, plus (C) if not previously paid, the Fixed Rental installment due on such Termination Date and any other sums accrued and unpaid through and including such date, less (ii) the proceeds of such sale, to the extent that the proceeds of such sale do not exceed the sum of the Termination Value paid by Lessee and the actual expenses incurred by Lessor in making such sale.

(c) If, within 60 days prior to the Termination Date, neither Lessor nor Lessee shall have received any bid for the sale of the Equipment or there shall not have been received any bid which shall be acceptable to Lessor, in its sole and absolute discretion, Lessor shall so advise Lessee. Thereupon, Lessee shall have the right (i) to notify Lessor, within 15 days following the giving of such advice, that Lessee will continue to lease the Equipment with the same effect as if Lessee had not given notice of termination with respect thereto or (ii) to pay to Lessor, on the Termination Date, the Termination Value of the Equipment, the Fixed Rental installment due on such Termination Date and any other sums accrued and unpaid through and including such date, and thereupon Lessee shall have no further right with respect to the Equipment and no further obligations with respect to the Equipment except those which survive the expiration of the term of this Lease. In the event of a termination pursuant to this Section 11.9(c), the Equipment shall be returned by the Lessee to the Lessor in accordance with the provisions of Section 13 hereof.

(d) Notwithstanding the foregoing, if the Termination Value exceeds the amount of any bid which is acceptable to Lessor, Lessee may at its option upon written notice given to Lessor not less than 45 days prior to the Termination Date, elect to rescind Lessee's notice of termination, whereupon this Lease shall not terminate but shall, provided that no Event of Default (or other event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) has occurred and is continuing hereunder and Lessor has not by reason thereof declared this Lease to be in default, continue in full force and effect as though no such notice of termination had been given by Lessee. In the event Lessee shall elect to rescind its notice of termination in accordance with the provisions of this Section

11.9(d), Lessee shall reimburse Lessor for all expenses which have been incurred in reliance upon any notice of termination by Lessee.

(e) Except as Lessee shall, in a timely fashion, have either exercised its right to continue to lease the Equipment pursuant to Section 11.9(c) hereof, or elected to rescind Lessee's notice of termination pursuant to Section 11.9(d) hereof, Lessee shall pay to Lessor all sums due pursuant to Section 11.9(b) hereof on the Termination Date, without asserting any setoff, counterclaim or other defense for any reason whatsoever.

(f) The Termination Value of the Equipment shall be an amount determined as of the Termination Date equal to that percentage of the Purchase Price of the Equipment set forth in the Schedule of Termination Value attached hereto as Schedule D opposite such date.

## SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before the first May 1 which occurs more than four months following the date of this Lease, the Lessee will furnish to the Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser) an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2. Lessor's Inspection Rights. The Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser) each shall have the right, at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

## SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession



of such Item of Equipment to the Lessor upon such storage tracks within the continental United States as the Lessor may reasonably designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 180 days and transport the same at any time within such 180-day period to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. During any such storage period the Lessee shall maintain the Items of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances and in any event shall maintain the insurance required by Section 11.1 hereof during such period. All amounts earned in respect of the Equipment after the date of expiration of this Lease, but not exceeding the rental, per diem, or other similar charge for equipment received therefor, shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 60 days after the expiration of this Lease, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the higher of (i) an amount equal to 0.03294% of the Purchase Price of such Item of Equipment, or (ii) the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item for each such day exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

#### SECTION 14. DEFAULT.

14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

- (a) Default shall be made in the payment of any part of the rental or Casualty Value provided in Section 2 or 11 hereof and such default shall continue for five days;

(b) The Lessee shall make or permit any assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof not permitted by this Lease;

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;

(d) Any representation or warranty made by the Lessee herein or in the Participation Agreement or the Purchase Order Assignment or in any statement or certificate furnished to the Lessor or the Note Purchaser pursuant to or in connection with this Lease, the Participation Agreement or the Purchase Order Assignment is untrue in any material respect as of the date of issuance or making thereof;

(e) Default or the happening of any event of default shall occur (i) under any evidence of indebtedness of Lessee for borrowed money in excess of \$1,000,000, (ii) under any indenture, agreement or similar instrument under which indebtedness of Lessee for borrowed money in excess of \$1,000,000 may be issued or (iii) under any "material lease" (as defined below), with the result that the indebtedness or rentals, as the case may be, under any such indenture, agreement, material lease or similar instrument shall be accelerated or any other remedy available upon a default under any such instrument shall be asserted (other than any default involving the sum of \$100,000 or less, which is cured by Lessee within two business days after the acceleration of any indebtedness or rentals or assertion of any other default remedy, and which shall occur not more often than once in any twelve month period);

(f) The Lessee becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they may mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Lessee or for the major part of its property;

(g) A trustee or receiver is appointed for the Lessee or for the major part of its property and is not discharged within sixty (60) days after such appointment; or

(h) Any other proceedings shall be commenced by or against the Lessee for any relief which includes, or

might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 45 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier.

The term "material lease" shall mean any lease of real or personal property (other than this Lease) entered into by Lessee, as tenant or lessee, which has an unexpired term of more than three years whether or not reflected in the balance sheet of Lessee and which provides for the payment of rental by Lessee in any fiscal year in an aggregate amount exceeding \$150,000.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees; and/or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the

Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination, such present worth to be computed in each case on a basis of a 6% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental; and/or

(c) direct sublessees (including, without limitation, the Permitted Sublessee) to pay all rental and other amounts and render all performances due to Lessee under any subleases and otherwise attorn to the Lessor and its assigns hereunder, which direction shall be joined by the Lessee.

For purposes of Section 14.2 above, the Fair Rental Value and Fair Market Value for any Item of Equipment shall be determined in the manner provided for appraisal arrangements specified in

Section 18.2(b) hereof; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

14.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14.5. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor and the Note Purchaser, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

## SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

- (a) Forthwith place such Equipment upon such storage tracks within the continental United States

as the Lessor may reasonably designate or, in the absence of such designation, as the Lessee may select;

(b) Provide storage at the risk of the Lessee for each such Item of Equipment on such tracks until the same has been sold, leased or otherwise disposed of by the Lessor; and

(c) Transport any Items of Equipment to any place of interchange on the lines of a railroad within a 100-mile radius of such storage tracks, all as the Lessor may reasonably direct upon not less than 30 days' written notice to the Lessee.

During any such storage period the Lessee shall maintain the Items of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it and in any event shall maintain the insurance required by Section 11.1 hereof during such period. All amounts earned in respect of the Equipment after the date of termination of this Lease, but not exceeding the rental, per diem, or other similar charge for equipment received therefor, shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such assignee for each day thereafter an amount equal to the amount, if any, by which the higher of (i) an amount equal to 0.03294% of the Purchase Price of such Item of Equipment, or (ii) the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor or such assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

## SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee pursuant to Section 2.3 hereof. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor pursuant to Sections 6, 10.2, 11.1 [with respect to public liability insurance] and 20.2 hereof which shall remain enforceable by the Lessor), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment except as permitted by Section 17.3 hereof. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. Use and Possession by Lessee, Interchange, "Mileage". So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to and shall have the exclusive use and possession of the Equipment. The Lessee agrees that the Equipment will substantially at all times be used within the continental United States, that in no event will the Lessee assign or permit the assignment of any Item of Equipment to service involving the regular operation and maintenance thereof outside the continental United States and that the Lessee shall at all times remain in compliance with the terms and provisions of this Lease in respect of all of the Items of Equipment wherever located. The Lessee agrees that it will not assign this Lease or any of its rights hereunder or sublease any Item of Equipment except in accordance with the provisions set forth below in this Section 17.2. No such sublease or permitted use shall relieve the Lessee of any of the obligations, liabilities or duties hereunder, which shall be and remain those of a principal and not a surety.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to sublease the Items of Equipment to a Permitted Sublessee (as defined below) and notice of such sublease, including the name of the Permitted Sublessee, shall be given to the Note Purchaser, said sublease to be evidenced by a Permitted Sublease (as defined below). So long as the Lessee shall not be in default under this Lease, each Item of Equipment may, under the terms of this Lease and pursuant to any such Permitted Sublease, be used upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all of the terms and conditions of this Lease and any Permitted Sublease.

"Permitted Sublessee" shall mean Oregon & Northwestern Railroad Company (the "Initial Permitted Sublessee") and any other corporation duly incorporated under the laws of the United States or any state thereof, and "Permitted Sublease" shall mean the Lease Agreement (the "Initial Permitted Sublease") dated as of March 1, 1978 between the Lessee and the Initial Permitted Sublessee and any other written sublease agreement;



provided, however, that any such sublease and the rights and interests of any Permitted Sublessee thereunder (i) shall in all events be subject and subordinate to this Lease and the rights and interests of the Lessor and its successors and assigns hereunder, (ii) shall be for a term expiring not later than the end of the then current term of this Lease, (iii) shall provide for the payment of rentals and other sums, and certain such other terms and conditions, which are no less favorable to the Lessee than the rentals and other sums payable under, and the terms and conditions contained in, the Initial Permitted Sublease, and (iv) the Lessee, or the Permitted Sublessee under such sublease, shall have caused all filings, recordations and deposits of such sublease and of the assignment thereof to secure the obligations of the Lessee hereunder set forth in Section 20 hereof to be made under Section 20(c) of the Interstate Commerce Act and otherwise as required within the United States in order to protect and perfect the interests of the Lessor and the Note Purchaser, and an opinion of counsel to such effect shall have been delivered to the Lessor and the Note Purchaser.

It is contemplated that the Lessee and/or the Permitted Sublessee shall receive insofar as applicable law and regulations allow, all mileage allowance rentals and/or other compensation (hereinafter referred to as "Mileage") payable by carriers by reason of the use of an Item of Equipment and if for any reason the Lessor shall receive any Mileage then (unless an Event of Default shall have occurred and be continuing, in which event such Mileage or portion thereof shall be retained by the Lessor until such Event of Default shall no longer be continuing) the Lessor shall remit to the Lessee promptly the portion of such Mileage equal to the pro-rata portion of the rentals payable hereunder for such period of use, and will further remit the portion in excess thereof to the Lessee after the Lessee shall furnish to the Lessor, at the Lessee's sole expense, either (i) a ruling of the Interstate Commerce Commission to the effect that the remittance thereof to the Lessee will not constitute a rebate within the meaning of 49 U.S.C. Section 41, as amended, or (ii) an opinion of counsel to the same effect.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the assets of the Lessee, provided that such assignee, successor or transferee shall have duly assumed the obligations of the Lessee hereunder and that it will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall

not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 18. RIGHT OF FIRST REFUSAL; RENEWAL OPTIONS.

Provided that this Lease has not been earlier terminated and that no Event of Default or other event which after notice of lapse of time or both would become an Event of Default, shall have occurred and be continuing, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the initial term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all but not fewer than all of the Items of Equipment then covered by this Lease, for up to, but no more than, ten consecutive additional one-year periods or any combination of consecutive whole years aggregating not more than ten years, the first such period commencing on the scheduled expiration of the initial term and each subsequent renewal period, if elected, commencing upon the expiration of the previous extended term of this Lease, at the then Fair Rental Value (as hereinafter defined) payable in quarterly payments in arrears in each year of such extended term. An election to extend the Lease pursuant to this Section 18 shall be irrevocable.

Fair Rental Value shall be determined with respect to Equipment on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 30 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Equipment, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, such appraiser shall be the American Appraisal Company, Milwaukee, Wisconsin, or any organization successor thereto. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Rental Value of the Equipment subject to the proposed extended term within 20 days after his or their appointment.

If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Rental Value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the average of the three appraisals arrived at by said three appraisers shall be determined and the difference between said average and each of the appraisals shall be computed. The appraisal having the greatest difference (plus or minus) shall be dropped from further consideration for this purpose, and the average of the two remaining appraisals shall be binding and conclusive on Lessor and Lessee. The provision for this appraisal procedure shall be the exclusive means of determining Fair Rental Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee and Lessor in equal shares.

If Lessor shall intend to sell the Equipment at or within ninety days following the expiration of the initial term or any extension thereof, it shall furnish Lessee with written notice thereof not less than ninety days prior to the later of the expiration of the initial term or such extension or such other proposed date of sale. Following receipt of such notice, the Lessee, provided that no Event of Default or other event which after notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing, will have the option to purchase all, but not less than all, of the Equipment, upon the expiration of the initial term or any extension thereof, for an amount in each case equal to the then Fair Market Value thereof. Such right shall continue for 15 days after the determination of the Fair Market Value. Thereafter, the Lessor shall be under no obligation to sell the Equipment to the Lessee. Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the sum which would obtain in an arm's-length transaction between an informed and willing purchaser (other than a purchaser currently in possession) and an informed and willing seller under no compulsion to sell, and, in such determination, costs of removal from the location of current use shall not be a deduction from such sum. Fair Market Value shall be determined by agreement between the Lessor and the Lessee or, in the absence of such agreement, by independent appraisal utilizing as nearly as possible the procedure for appraisal for Fair Rental Value set forth in this Section 18. An election to purchase the Equipment pursuant to this Section 18 shall be irrevocable unless it is revoked by Lessee within 15 days after the determination of Fair Market Value.

Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned

to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding any nonpayment of rent due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 12% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. COLLATERAL ASSIGNMENT BY LESSEE OF PERMITTED SUBLEASES.

20.1. Assignment. As collateral security for the payment of any and all of the obligations and liabilities of the Lessee due hereunder, the Lessee does hereby grant a security interest in and assigns to the Lessor all of its right, title and interest which it has acquired or may have acquired under and pursuant to each and all Permitted Subleases as and only to the extent that the Permitted Subleases relate to, arise from, by virtue of, or in connection with, the Equipment, whether now existing or hereafter entered into, including, without limitation, the Initial Permitted Sublease between the Lessee and the Initial Permitted Sublessor and also in any and all extensions and renewals thereof or of any other Permitted Subleases as and only to the extent that the Permitted Subleases relate to the Equipment, including the right to any and all sums and moneys payable to the Lessee pursuant thereto or to any other Permitted Subleases and any and all rights of the Lessee to receive said sums and moneys; provided, however, that so long as the Lessee shall not be in default hereunder, the Lessee shall be entitled to collect and receive all such sums and moneys thereunder, but at any time the Lessee shall be in default under this Lease, then the party to which Fixed Rentals are then payable pursuant to Section 2.3 hereof shall have the right to collect and receive all such sums and moneys as above provided, and apply the same to the payment of any rentals or other sums payable by the Lessee hereunder.

20.2. Further Assignment. The Lessee acknowledges and agrees that (i) all rights and interests of the Lessor pursuant to this Section 20 may be assigned by the Lessor to any assignee in accordance with Section 16 hereof, and (ii) the assignment provided for in this Section 20 shall not in any way obligate the Lessor or any of its successors or assigns to perform or satisfy any of the obligations or liabilities of the Lessee under any of such Permitted Subleases.

20.3. Power of Attorney. Subject to the limitations contained in this Section 20, the Lessee hereby irrevocably constitutes and appoints the Lessor its true and lawful attorney with full power of substitution for it in its name and stead to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all sums or properties which may be or become due, payable or distributable to and in respect of the interests assigned under this Section 20, with full power to settle, adjust or compromise any claim thereof or therefor as fully as the Lessee could itself do and to endorse the name of the Lessee on all commercial paper given in payment or part payment of and all documents of satisfaction, discharge or receipt required or requested in connection therewith and in its discretion, to file any claim, to take any other action or proceeding, either in its name or name of the Lessee or otherwise, which the Lessor may deem necessary or appropriate to collect or otherwise realize upon any and all interest assigned hereunder, or which may be necessary or appropriate to protect and preserve the right, title and interest of the Lessor in and to the interests assigned under this Section 20 and the security intended to be afforded hereby.

20.4. Rights under Uniform Commercial Code. Upon the occurrence of any Event of Default under this Lease, the Lessor shall, in addition to all other rights and remedies provided for herein, have in connection with the assignment provided for in this Section 20, all the rights of a secured party under the Uniform Commercial Code of Illinois (regardless of whether such Code is the law of the jurisdiction where the rights or remedies are asserted).

20.5. Further Assurance. Without limiting the foregoing, the Lessee hereby further covenants that it will, upon the written request of the Lessor execute and deliver such further instruments and do and perform such other acts and things as the Lessor or its assigns may deem necessary or appropriate to effectively invest in and secure to the Lessor and its assigns the interests assigned pursuant to this Section 20 or other rights or interests due or hereafter to become due.

20.6. Application of Moneys. All distributions and payments to the Lessor shall be applied by the Lessor to the payment and reduction of the obligations and liabilities of the Lessee under this Lease and in accordance with the terms and provisions of the Security Agreement.

20.7. Duration. The satisfaction or discharge of any part of the obligations or liabilities of the Lessee under this Lease shall not in any way satisfy or discharge the assignment provided for in this Section 20, but such assignment shall remain

in full force and effect so long as any amount remains unpaid on any such obligations or liabilities.

SECTION 21. MISCELLANEOUS.

21.1. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given five days after deposit in the United States certified mails, first class, postage prepaid, addressed as follows:

If to the Lessor: Gould Leasing Services, Inc.  
10 Gould Center  
Rolling Meadows, Illinois 60008  
  
Attention: Controller

Payments to the Lessor hereunder  
to be made as follows:

If by check:

Gould Leasing Services, Inc.  
P. O. Box 96937  
Chicago, Illinois 60693

If by wire transfer:

Continental Illinois National Bank  
and Trust Company of Chicago  
Account No. 73-43159

In either case with notice of payment  
to the attention of Controller,  
Gould Leasing Services, Inc.

If to the Note  
Purchaser:

The First National Bank of Boston  
100 Federal Street  
Boston, Massachusetts 02110

Attention: Special Industries Division

If to the Lessee:

Brae Corporation  
Three Embarcadero Center  
San Francisco, California 94111

Attention: Vice President-  
Finance

or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing.

21.2. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder (including, without limitation, the Note Purchaser) may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate of 12% per annum (or the maximum lawful rate whichever is lesser).

21.3. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

21.4. Law Governing. This Lease shall be construed in accordance with the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

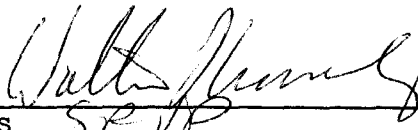
21.5. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

21.6. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

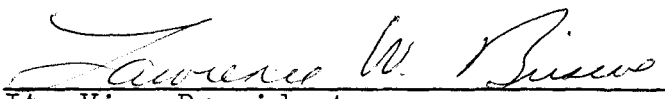
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers

thereunder duly authorized and the corporate seals to be hereto  
affixed as of the day and year first above written.

GOULD LEASING SERVICES, INC.

By   
Its SPVP

BRAE CORPORATION

By   
Its Vice President



STATE OF ILLINOIS

COUNTY OF COOK

)  
) SS  
)

On this 23<sup>rd</sup> day of January, 1979, before me personally appeared WALTER CROWLEY, to me personally known, who being by me duly sworn, says that he is the SENIOR VICE PRESIDENT of GOULD LEASING SERVICES, INC., that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth B. Nowak  
Notary Public

[NOTARIAL SEAL]

My commission expires:

NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXPIRES JUNE 30 1981  
ISSUED THRU ILLINOIS NOTARY ASSOC

STATE OF CALIFORNIA

CITY OF SAN FRANCISCO

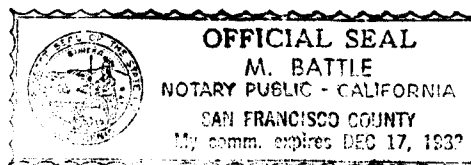
)  
) SS  
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On this 24<sup>th</sup> day of January, 1979, before me personally appeared Lawrence W. Briscoe, to me personally known, who being by me duly sworn, says that he is the Vice President-Finance of BRAE CORPORATION, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

L. Battle  
Notary Public

[NOTARIAL SEAL]

My commission expires: 10/17/82



DESCRIPTION OF ITEMS OF EQUIPMENT

Manufacturer of Equipment:      Fruit Growers Express Company

Description and Mark and  
Number of Items of  
Equipment:

200 50' XM Boxcars  
Marked and Numbered ONW 5051  
to ONW 5250, both inclusive

Maximum Purchase Price  
of Equipment:

\$41,500 per Item

Maximum Aggregate Purchase  
Price of Equipment:

\$8,300,000

Place of Delivery:

Eden, North Carolina

Outside Delivery Date:

June 30, 1979

(Brae No. 79-1)

SCHEDULE A  
(to Equipment Lease)

CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE

TO: Gould Leasing Services, Inc.  
(the "Lessor")

Fruit Growers Express Company (the  
"Manufacturer")

I, a duly appointed and authorized representative of Brae Corporation (the "Lessee") under the Equipment Lease dated as of January 1, 1979 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT: 200 50' XM Boxcars

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and appear to conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased from Gould Leasing Services,  
Inc., as Owner, and Subject to a Security  
Interest Recorded with the I.C.C."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer for any warranties it has made with respect to the Equipment.

Dated: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
Inspector and Authorized  
Representative of the Lessee

(Brae No. 79-1)

SCHEDULE B  
(to Equipment Lease)

Term Lease Commencement Date  
or Number of Fixed Rental  
Payment Date on which  
Casualty Value is Paid

---

Percentage of Purchase  
Price Payable as  
Casualty Value

---

30	81.588639%
31	80.123242
32	78.608497
33	77.045858
34	75.440368
35	73.787466
36	72.086011
37	70.339696
38	68.559942
39	66.738615
40	64.874562
41	62.971168
42	61.038123
43	59.063430
44	57.045942
45	54.991117
46	52.910772
47	50.788841
48	48.624190
49	46.424347
50	44.203199
51	41.940650
52	39.635577
53	37.297533
54	34.940488
55	32.540957
56	30.097794
57	27.621863
58	25.126584
59	22.586336
60	20.000000

and thereafter

### SCHEDULE OF TERMINATION VALUE

The Termination Value for an Item of Equipment payable on the 28th Fixed Rental payment date and on any Fixed Rental payment date thereafter shall mean an amount equal to the percentage of the Purchase Price of such Item set forth opposite such date in the following schedule:

<u>Number of Fixed Rental Payment Date on which Termination Value is Paid</u>	<u>Percentage of Purchase Price Payable as Termination Value</u>
28	86.754777
29	85.339969
30	83.876020
31	82.043246
32	80.486165
33	78.880028
34	77.229852
35	75.241047
36	73.498615
37	71.692385
38	69.851061
39	67.721529
40	65.811998
41	63.861928
42	61.880928
43	59.659205
44	57.608590
45	55.519783
46	53.404518
47	51.246723
48	49.050024
49	46.817325
50	44.562422
51	42.049747
52	39.733759
53	37.384542
54	35.016000
55	32.540957
56	30.097794
57	27.621863
58	25.126584
59	22.586336
60	20.000000

(Brae No. 79-1)

SCHEDULE D  
(to Equipment Lease)